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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re ROBERT DION PARKS on Habeas
Corpus.

C062527

(Super.Ct.No.
CM008272)

A jury convicted petitioner Robert Dion Parks of one count of first degree robbery (Pen. Code, § 211) and one count of first degree burglary (Pen. Code, § 459). On appeal, this court affirmed the judgment as modified. (*People v. Parks* (Sept. 26, 2000, C031037) [nonpub. opn.].)

In a petition for a writ of habeas corpus, petitioner now seeks relief from the judgment on grounds that were not raised on appeal. He claims, among other things, that he was unlawfully sentenced on both convictions which arose out of a single occurrence. (*People v. Lewis* (2008) 43 Cal.4th 415, 519 [section 654 of the Penal Code "bars multiple punishments for separate offenses arising out of a single occurrence where all of the offenses were incident to one

objective"].) This court issued an order to show cause "limited to the claim that petitioner's sentence is not authorized by law because it fails to stay execution of the sentence for burglary. [Citing Pen. Code, § 654.]" The Attorney General concedes the claim is meritorious. We will accept the concession and, thus, modify the judgment.

The robbery and burglary convictions arose out of the following occurrence. When Mack Burns returned home and turned on a light, petitioner struck him in the head with a flashlight and threw him to the floor. Burns chased petitioner out of the house and then telephoned the police. Petitioner was promptly captured nearby with two dolls and a large amount of jewelry belonging to Burns and his wife. Prior to trial, petitioner admitted that he had gone into the Burns's home because he needed money for food and travel.

The trial court sentenced petitioner to consecutive terms of 25 years to life for both the robbery conviction and the burglary conviction. When petitioner filed this habeas corpus petition in the trial court, it was denied as untimely, on the ground that the multiple punishment claim could have been raised on appeal from the judgment of conviction.

DISCUSSION

Petitioner contends that punishment for both convictions is prohibited by Penal Code section 654. The People correctly concede that the general doctrine that bars habeas corpus relief for claims that could have been raised on appeal (see, e.g., *In re Waltreus* (1965) 62 Cal.2d 218, 225) is inapplicable to a claim that the

sentence imposed is not authorized by law (see, e.g., *In re Harris* (1993) 5 Cal.4th 813, 842). The People also correctly concede that petitioner's claim has merit because the force for the robbery was used to escape with the property obtained in the burglary, such that the offenses were incident to one objective, i.e., the theft of the property; hence, Penal Code section 654 bars multiple punishment for the separate offenses. We accept the concession. (See, e.g., *People v. Perry* (2007) 154 Cal.App.4th 1521, 1525-1527; *People v. Le* (2006) 136 Cal.App.4th 925, 930-932.)

Because the sentencing error at issue involves a pure question of law and can be corrected without reference to any of the factual matters presented at the sentencing hearing, we may modify the judgment without remanding the case to the trial court for further proceedings. (See *People v. Smith* (2001) 24 Cal.4th 849, 853-854.)

DISPOSITION

The order to show cause is discharged. The petition for writ of habeas corpus is granted as to the claim of multiple punishment.¹ The judgment is modified to stay the execution of petitioner's

¹ Our order to show cause was limited to the issue discussed in this opinion, and petitioner's other claims will be resolved by separate order. (See *In re Bolden* (2009) 46 Cal.4th 216, 218, 230; *In re Sassounian* (1995) 9 Cal.4th 535, 547 ["In issuing the order to show cause, the court also makes 'an implicit determination' as to claims *outside the order* that the petitioner has failed to carry his burden of allegation, that is, that he has 'failed to make a prima facie case'" [orig. emphasis]]; *People v. Duvall* (1995) 9 Cal.4th 464, 475, quoting *In re Clark* (1993) 5 Cal.4th 750, 781, fn. 16 ["When an order to show cause does issue, it is limited to the claims raised in the petition"].)

sentence on count two, burglary, pursuant to Penal Code section 654. Upon finality of this opinion, the Clerk/Administrator of this court shall remit a certified copy of this opinion to the superior court for filing. The superior court is directed to amend the abstract of judgment to reflect the modification and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

SCOTLAND, P. J.

We concur:

SIMS, J.

CANTIL-SAKAUYE, J.